

## COMMITTEE AMENDMENT

[STAFF WORKING DRAFT]

September 12, 2002

Purpose: To establish, as a violation of the Federal Trade Commission Act, certain predatory practices of rate-regulated public utilities.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION—107TH Cong., 2D Sess.**

**S. —, 107TH Congress, 2D Session**

SEPTEMBER 19, 2002

INTENDED to be proposed by Mr. WYDEN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. —. UNFAIR COMPETITION AND TRADE PRACTICES**

3 **IN ENERGY SERVICES MARKETS.**

4 (a) IN GENERAL.—A rate-regulated public utility—

5 (1) may not use its status as a monopoly fran-

6 chise to confer upon its unregulated subsidiaries, af-

7 filiates, or associated companies any unfair competi-

8 tive advantage;

9 (2) shall conduct all transactions with its un-

10 regulated subsidiary, affiliate, or associate compa-

11 nies on an arm's length basis; and

1           (3) shall account for all transactions in accord-  
2           ance with generally accepted accounting principles.

3           (b) DISCRIMINATION AND SUBSIDIZATION PROHIB-  
4           ITED.—A rate-regulated public utility may not—

5           (1) discriminate between its subsidiary, asso-  
6           ciate or affiliate company and any other entity in  
7           the provision of, or procurement of, goods, services,  
8           facilities, or information, or in the establishment of  
9           standards or referral of customers;

10          (2) cross-subsidize its affiliated or subsidiary  
11          operations;

12          (3) shift any costs of its affiliated or subsidiary  
13          operations to its regulated utility operations; nor

14          (4) sell, transfer, provide the benefit of, or per-  
15          mit the use of, or access to, equipment, tangible or  
16          intangible assets, or services, including labor, of the  
17          public utility unless such transfer, provision, or  
18          other use is fully compensated by the subsidiary, as-  
19          sociate, or affiliated company and in such a manner  
20          so as to avoid foregoing revenues or creating an un-  
21          fair competitive advantage over non-affiliated com-  
22          petitors except where specifically permitted by law or  
23          by order of the appropriate State regulatory commis-  
24          sion.

1 (c) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR  
2 PRACTICE.—

3 (1) IN GENERAL.—Notwithstanding any memo-  
4 randum of understanding or other agreement be-  
5 tween the Federal Trade Commission and the De-  
6 partment of Justice with respect to enforcement ju-  
7 risdiction over public utilities, the violation of sub-  
8 section (a) or (b) is an unfair or deceptive act or  
9 practice proscribed under section 18(a)(1)(B) of the  
10 Federal Trade Commission Act (15 U.S.C.  
11 57a(a)(1)(B)).

12 (2) ACTIONS BY THE COMMISSION.—The Com-  
13 mission shall prevent any person from violating sub-  
14 sections (a) and (b) in the same manner, by the  
15 same means, and with the same jurisdiction, powers,  
16 and duties as though all applicable terms and provi-  
17 sions of the Federal Trade Commission Act (15  
18 U.S.C. 41 et seq.) were incorporated into and made  
19 a part of this section. Any entity that violates any  
20 provision of subsection (a) or (b) is subject to the  
21 penalties and entitled to the privileges and immuni-  
22 ties provided in the Federal Trade Commission Act  
23 in the same manner, by the same means, and with  
24 the same jurisdiction, power, and duties as though  
25 all applicable terms and provisions of the Federal

1 Trade Commission Act were incorporated into and  
2 made a part of this section.

3 (d) RATE-REGULATED PUBLIC UTILITY DEFINED.—

4 In this section, the term “rate-regulated public utility”  
5 means a public-utility company (as defined in section  
6 2(a)(5) of the Public Utility Holding Company Act of  
7 1935 (15 U.S.C. 79b(a)(5))) the retail rates and charges  
8 of which are regulated by a State commission (as defined  
9 in section 2(a)(26) of that Act (15 U.S.C. 79b(a)(26))).

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